



Don't Let This  
**HAPPEN  
TO YOU!**



Real Life Examples of  
Export Control *and*  
Antiboycott Violations



U.S. DEPARTMENT OF COMMERCE  
Bureau of Industry and Security  
Export Enforcement

**DON'T LET THIS HAPPEN TO YOU!**

## **An Introduction to U.S. Export Control Law**

*Real Life Investigations of Export Control and Antiboycott Violations*



## **EXPORT ENFORCEMENT**

BUREAU OF INDUSTRY AND SECURITY

U.S. DEPARTMENT OF COMMERCE

APRIL 2005



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April 2005

**Dear Exporting Community,**

**T**he purpose of this letter and accompanying booklet is to help you and your company better understand U.S. export control laws. U.S. export control laws help protect our country and our allies by keeping goods and technologies out of the hands of countries of concern and terrorists who would misuse them to attack us or our allies. This booklet is intended to deter violations of our export control laws and promote best export compliance practices by the exporting community.

I am a representative of the U.S. Department of Commerce's Bureau of Industry and Security, the U.S. Government agency responsible for administering most U.S. export control laws on dual-use items. Dual-use items are items that have both a commercial application and a potential weapons of mass destruction, conventional arms, or terrorist end-use. Nearly all U.S. exporters trade in items that are subject to the export control laws that we administer. These items include not only sophisticated hardware, technologies and software, but also more common items such as chemical weapons precursors that are used in ball point pens. It is vital that you understand U.S. export laws before proceeding with export transactions, to ensure your exports do not adversely affect our national security or foreign policy interests.

Most of our dual-use export control system is set forth in the Export Administration Regulations (EAR). The EAR impose responsibilities on all of the parties to export transactions, including exporters, freight forwarders, carriers and consignees. The U.S. Government prosecutes willful violators of U.S. export control laws criminally, and can impose substantial fines and prison terms on those persons who violate those laws. Also, violations of the EAR can be enforced administratively even if no criminal charges are brought, and can result in fines and denial of export privileges. These penalties can have significant adverse consequences to your business, so it is vital that you familiarize yourself with U.S. law and regulations to avoid the real-life situations that are presented in this booklet.

In this booklet, you will be introduced to various parts of the EAR by reference to actual closed enforcement cases that are a matter of public record. Each chapter of this booklet covers a particular area of the EAR, followed by examples of relevant actual criminal and administrative cases that resulted in fines, imprisonment, and/or denial of export privileges. We hope that you will use this booklet as a guide. Please remember, it is up to you to ensure that you are in compliance with the law. Don't let an export violation ruin you!

Sincerely,



**Wendy L. Wysong**

*Acting Assistant Secretary for Export Enforcement*





# Introduction to U.S. Export Controls

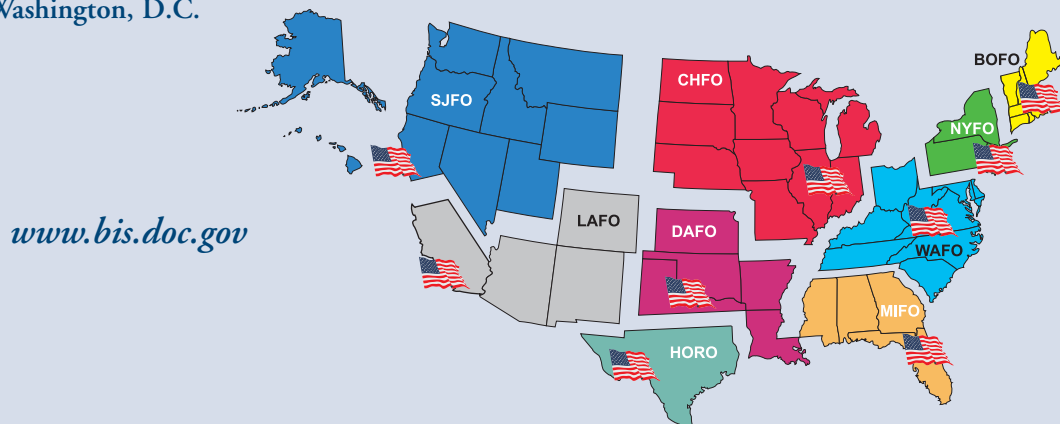
## Export Enforcement Introduction and Mission

The Bureau of Industry and Security (BIS) is a part of the U.S. Department of Commerce. The Export Enforcement arm of BIS protects U.S. national security, foreign policy, and economic interests by educating parties to export transactions on how to improve export compliance practices, interdicting illegal exports, investigating violations, and prosecuting violators of export control laws. At the same time, Export Enforcement works to avoid impeding legitimate trade. Export Enforcement has federal law enforcement authority and its special agents work with BIS licensing officials and policy staff to deter the export of items which, in the hands of unreliable users, can prove damaging to U.S. national security and foreign policy interests. Export Enforcement personnel work closely with Department of Commerce lawyers in the Office of Chief Counsel for Industry and Security and Department of Justice lawyers in U.S. Attorneys' offices to bring enforcement actions against violators of U.S. export control laws.

### WHERE ARE WE LOCATED?

In addition to our Headquarters at the Department of Commerce in Washington, D.C., Export Enforcement has nine satellite offices that have areas of responsibilities covering the entire United States.

Field Offices are located in: New York, Boston, Chicago, Dallas, Houston, Los Angeles, Miami, San Jose, and Washington, D.C.



The Office of Export Enforcement also has Export Control Attaches located in 5 overseas locations. Export Control Attaches are Office of Export Enforcement personnel on detail to the Foreign Commercial Service and report directly to the Embassies to which they are posted, with direction and oversight by the Office of Export Enforcement's Operations Division.

Attaches are located in: Beijing, China; Hong Kong, China; New Delhi, India; Moscow, Russia; Dubai, United Arab Emirates.

## Export Control Law

A number of executive branch agencies have responsibilities for regulating exports from the United States. The Department of Commerce is responsible for controlling the widest range of goods and technology, all of which are capable of being used for commercial purposes but which also present foreign policy or national security concerns. BIS implements export controls for the Department of Commerce through the Export Administration Regulations (EAR). Other federal agencies with a role in export control include the State Department, which controls arms exports, the Department of Energy, which controls exports and re-exports of technology related to the production of special nuclear materials and the Department of Treasury, which administers certain embargoes.

## Responsible Parties

The EAR place legal responsibility on persons who have information, authority or functions relevant to carrying out transactions subject to the EAR. This includes exporters, freight forwarders, carriers, consignees and any other relevant party. The EAR apply not only to parties in the United States, but also to persons in foreign countries who are involved in transactions subject to the EAR.

## Consequences for Violating the EAR

Violations of the EAR are subject to both criminal and administrative penalties. In some cases, where there has been a willful violation of the EAR, violators may be subject to both criminal fines and administrative penalties. However, for most administrative violations, there is no intent requirement, which means that administrative cases can be brought in a much wider variety of circumstances than criminal cases. Fines for export violations can reach up to \$1 million per violation in criminal cases, \$11,000 per violation in most administrative cases, and \$120,000 per violation in certain administrative cases involving national security issues.<sup>1</sup> In addition, criminal violators may be sentenced to prison time and administrative penalties may include the denial of export privileges. A denial of export privileges basically prohibits a person from participating in any way in any transaction subject to the EAR. Furthermore, it is a violation of the EAR for anyone to participate in an export transaction subject to the EAR with a denied person.

It should be noted that in most cases, BIS reaches negotiated settlements in its administrative cases prior to a formal administrative hearing. Those negotiated settlements are often reached as a result of voluntary self-disclosures (VSDs) of violations by companies and individuals. BIS considers VSDs to be a significant mitigating factor when negotiating settlements of administrative cases. VSDs reflect a company's or individual's acknowledgment of guilt and acceptance of responsibility for EAR violations. To encourage VSDs, in appropriate cases, fines and other administrative penalties may be significantly reduced as a result of the fact that BIS became aware of the violations as a result of a VSD. Guidance regarding administrative penalties is

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<sup>1</sup> These violations are based on the Export Administration Act of 1979 (50 U.S.C. app. §§ 2401- 2420 (2000)), as amended, and inflation adjustments made in 15 C.F.R. § 6.4 (2004). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 6, 2004 (69 Fed. Reg. 48763, August 10, 2004), continues the Regulations in effect under IEEPA.

provided in Supplement No. 1 of Part 766 of the EAR and in chapter five of this publication. In that guidance, some factors, including VSDs, are given "great weight" and are viewed as significantly mitigating violations. In the following cases, VSD credit is noted where it was given.

As a standard provision of BIS settlement agreements, the respondent involved neither admits nor denies the charges made against it. Therefore, the violations referenced in many of the summaries in this booklet have neither been proven in court nor been admitted to by the company or individual. Please also be aware that this letter and booklet are not intended to create, nor do they create, any right or benefit, procedural or substantive, enforceable by law against the Department of Commerce or any other part of the U.S. Government. Nor should the cases in this booklet be interpreted as precedent in any future actions involving the U.S. Government.



# Chapter 1 - Export License Requirements

## Introduction

Many exports of items, including software and technology, require a license from BIS. It is the responsibility of the exporter to apply for a license when one is required under the EAR. License requirements for a particular transaction, as described in the EAR, are based on a number of factors, including technical characteristics of the item to be exported and the item's destination, end-user, and end-use. When determining whether a license is required for your transaction, you should be able to answer the following questions:

**What is being exported?**

**Where is the item being exported?**

**Who will receive the item?**

**How will the item be used?**

### PREVENTATIVE MEASURES YOU CAN TAKE

- Check exporters and customers
- Check end users and end-uses
- Review Shipper's Export Declarations

If you need assistance to determine whether the item you want to export requires a license you should:

1. Check the BIS Website <http://www.bis.doc.gov>, or
2. Call one of our export counselors at 202-482-4811 (Washington, DC) or 949-660-0144 (California) for counseling assistance.

Please note that, whether you are the exporter, freight forwarder, consignee, or other party to the transaction, you must address any red flags that arise because taking part in an export transaction where a license is required but not obtained may subject you to criminal or administrative liability. The EAR discuss red flags in a section entitled "Know Your Customer," Supplement No. Three to Part 732, which is available on the BIS website.

## Criminal / Administrative Case Examples

### Dr. Thomas Butler

**The Violation:** On January 14, 2003, Dr. Thomas Campbell Butler, M.D., a professor at Texas Tech University in Lubbock, Texas reported to the FBI that thirty vials of a potentially deadly plague bacteria, *Yersinia pestis* (the causative agent of human plague), were missing and presumed stolen from his research lab. The report sparked a bio-terrorism alert in west Texas and President Bush was informed of the incident. However, investigation proved that Dr. Butler had illegally exported the *Yersinia pestis* which is a controlled

item under the EAR and cannot be exported without the required export licenses from BIS. On January 15, 2003, Dr. Butler was arrested.

Among the numerous charges of which Dr. Butler was found guilty at trial, two were export control related: making false, fraudulent and fictitious statements regarding the exports to federal agents and making an unauthorized export to Tanzania.

**The Penalty:** Dr. Butler was convicted of forty-seven counts of a sixty-nine count indictment that stemmed from BIS's investigation. He was sentenced to two years in prison on March 10, 2004, and fired from Texas Tech.



*Dr. Thomas C. Butler*

### Omega Engineering Inc.

**The Violation:** Omega Engineering Inc., of Stamford, Connecticut and its former Vice President, Ralph Michel, violated the EAR by exporting certain laboratory equipment to Pakistan in 1997 after BIS had denied a license for the same shipment earlier that year.

**The Penalty:** In the criminal cases, Michel was sentenced to ten months imprisonment and fined \$50,000, and Omega was sentenced to a \$313,000 criminal penalty and five years corporate probation. In the administrative cases, Omega agreed to pay a \$187,000 penalty and to a five-year denial of export privileges to Pakistan. BIS also denied Michel's export privileges to Pakistan for five years.

### Worldwide Sports & Recreation, Inc. / Bushnell Corporation

**The Violation:** Between September 1995 and December 1997, Worldwide Sports & Recreation, Inc., which does business as Bushnell Corporation, exported Night Ranger night vision devices to Japan and fourteen other countries, without the required BIS export licenses. Bushnell sold the cameras to a Japanese company but transferred the cameras to a U.S. company in Florida knowing that the cameras were going to be exported to Japan. The foreign company and the domestic intermediary pleaded guilty and cooperated.



*Night Ranger - Night Vision*

**The Penalty:** In the criminal case, Bushnell was sentenced to a \$650,000 criminal fine and five years probation. In the related administrative case, Bushnell agreed to pay an administrative penalty of \$223,000 and to a one-year suspended denial of export privileges.

### Honeywell International Inc.

**The Violation:** Between December 2001 and February 2002, Honeywell exported hydrogen fluoride to Mexico from Louisiana without the required export licenses from BIS.

**The Penalty:** Honeywell agreed to pay a \$36,000 administrative penalty.

**Mitigating Circumstance:** Honeywell voluntarily self-disclosed the violations and cooperated fully with the investigation.

## Xinjian Yi and Yu Yi



*Thermal Imaging Camera*

**The Violation:** Between June 1998 and July 1999, Xinjian Yi and Yu Yi violated the EAR when they conspired to export thermal imaging cameras from the United States to the People's Republic of China (PRC) without the required export licenses from BIS. Xinjian Yi also violated the EAR when he carried the unlicensed cameras with him to the PRC, constituting an export, and Yu Yi aided and abetted the export of the thermal imaging cameras by acquiring them for Xinjian Yi in the United States.

**The Penalty:** The parties were each ordered to pay a \$22,000 administrative penalty, and denied export privileges for ten years.

## Silicon Graphics, Inc. (SGI)

**The Violation:** In 1996, SGI knowingly exported Challenge L computer systems, upgrades, and peripheral equipment to the All-Russian Institute for Technical Physics (Chelyabinsk-70) without the required export license from BIS. Additionally, SGI re-exported computers from its facility in Switzerland to the United Arab Emirates without the required licenses and failed to notify BIS of certain computer exports as required by the EAR.

**The Penalty:** In the criminal case, SGI pled guilty to two felony charges and was sentenced to \$1 million in criminal fines. In the related administrative case, SGI agreed to pay a \$182,000 administrative penalty. SGI's exporting privileges to Russia were denied for a period of three years. The denial of export privileges was suspended. SGI also agreed, for a period of three years, not to exercise its eligibility to use License Exception CTP for exports and re-exports to Russia, or to engage in any activity such as the repair or maintenance of computers involving any military or nuclear end-user or end-use in Russia without the prior written consent of BIS. Finally, SGI agreed to report to BIS, within 45 days, all of its exports to certain countries of concern during the prior six months.

## Midway Arms Inc.

**The Violation:** Between April 1999 and July 2001, Midway Arms, Inc. exported firearm scopes and mounts to Canada without the required export licenses. Midway also exported firearm scopes and mounts to Argentina, Barbados, Bolivia, Brazil, Finland, Mexico, the Philippines, South Africa, Sweden, Switzerland, and Uruguay without the required export licenses between May 1999 and September 2002.

**The Penalty:** Midway agreed to pay a \$222,000 administrative penalty, of which \$88,800 was suspended for a period of one year and thereafter waived.

## Morton International, Inc.

**The Violation:** Between 1999 and 2001 Morton International, Inc. exported and attempted to export thiodiglycol to Mexico and organo-inorganic compounds to Singapore and Taiwan without the required export licenses from BIS. Between 1997 and 2000, Morton International, Inc. affiliates Morton International, S.A.S. and Rohm and Haas Japan re-exported organo-inorganic compounds to Israel, Poland, Tunisia, Taiwan and India without the required export licenses from BIS.



**The Penalty:** Morton and its affiliates agreed to pay a \$647,500 administrative penalty.

**Mitigating Circumstance:** Morton International, Inc. voluntarily disclosed the violations relating to the shipments of organo-inorganic compounds to BIS and cooperated with the investigation.

### Roper Scientific, Inc.

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**The Violation:** Between March 13, 2000 and August 24, 2000, Roper Scientific, Inc. knowingly exported certain night vision cameras without the required export licenses from BIS. These cameras were exported to various destinations, including South Korea, Japan, and Italy. Roper also failed to retain certain export control documents and made false statements on a Shipper's Export Declaration.

**The Penalty:** Roper agreed to pay a \$422,000 administrative penalty.

**Mitigating Circumstance:** Roper voluntarily self-disclosed the violations and cooperated fully with the investigation.

### Molecular Probes, Inc.

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**The Violation:** Between January 1998 and October 2002, Molecular Probes, Inc. exported conotoxin and tetrodotoxin without the required export licenses from BIS. Molecular Probes has since been acquired by Invitrogen Corporation, which agreed to guarantee payment of the administrative penalty.

**The Penalty:** Molecular agreed to pay a \$266,750 administrative penalty.

**Mitigating Circumstance:** Molecular Probes voluntarily self-disclosed the violations and fully cooperated with the investigation.

### Reliance Steel & Aluminum Company

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**The Violation:** Between February 1999 and May 2002, Reliance Steel & Aluminum Company, acting through its Bralco Metals division, exported aluminum alloy rods without the required export licenses to the People's Republic of China, Taiwan, Malaysia, and Singapore. Bralco also submitted false Shipper's Export Declarations.

**The Penalty:** Reliance agreed to pay a \$95,850 administrative penalty.

### W.R. Grace

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**The Violation:** In 1997, W.R. Grace exported the chemical triethanolamine to end-users in Brazil, the Dominican Republic, Hong Kong, Mexico, the Philippines, Singapore, Thailand, and Venezuela without the required BIS export licenses.

**The Penalty:** W.R. Grace agreed to pay a \$178,500 administrative penalty.

**Mitigating Circumstance:** W.R. Grace voluntarily disclosed the violations and cooperated fully in the investigation.

## Hamilton Sundstrand Corporation

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**The Violation:** Between September 1997 and February 2001, Sundstrand exported or re-exported centrifugal pumps to various end-users in China, Taiwan, Israel, and Saudi Arabia, without the required export licenses. Sundstrand also made false statements on Shipper's Export Declarations, stating that no export license was required, when in fact a license was required. Additionally, Sundstrand failed to file Shipper's Export Declarations as required, and failed to provide certain required information on those Shipper's Export Declarations that Sundstrand did file.

**The Penalty:** Hamilton agreed to pay a \$171,500 administrative penalty.

**Mitigating Circumstance:** Sundstrand voluntarily disclosed these violations and cooperated fully in the investigation.

## Flint Hill Resources L.P.

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**The Violation:** Between July 1997 and March 1999, Koch Petroleum violated the EAR by exporting crude petroleum to Canada without the required export licenses from BIS and failing to file Shipper's Export Declarations.

**The Penalty:** Flint Hill, formerly known as Koch Petroleum Group, L.P., agreed to pay a \$200,000 administrative penalty.

**Mitigating Circumstance:** Koch Petroleum voluntarily self-disclosed the violations, and fully cooperated with the investigation.

## Compaq

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**The Violation:** Between 1994 and 2000, Digital Equipment Corporation and its subsidiaries violated the EAR by exporting or re-exporting computers and computer equipment without the required export licenses from BIS. Exports of these commodities were destined for South Korea. Re-exports of the U.S.-origin goods were made from Hong Kong to the PRC and from Singapore to India. Digital Equipment Corporation has now merged with Compaq

**The Penalty:** Compaq agreed to pay a \$39,000 administrative penalty.

**Mitigating Circumstances:** Compaq voluntarily self-disclosed the violations and cooperated fully in the investigation.

### LISTS TO CHECK

- List of Persons Denied Export Privileges
- Unverified List
- Entity List
- Specially Designated Nationals and Terrorist Lists
- Debarred List



## Chapter 2 - License Conditions

### Introduction

To minimize the potential diversion or misuse of licensed exports, BIS adds conditions to nearly all export licenses. License conditions may, among other things, restrict the way an item is used after export, or it may require certain reports to be made by the exporter. The conditions are created through an interagency process that includes BIS and agencies at the Departments of State and Defense, among others. The use of license conditions allows the Government to approve license applications that might otherwise be denied. Once a license is issued, BIS seeks to ensure compliance with the conditions.

### Criminal / Administrative Case Examples

#### Global Dynamics Corporation

**The Violation:** Between May 2001 and January 2002, Global Dynamics Corporation exported and attempted to export military truck parts to South Korea in violation of the terms of a BIS license. Most of these exports were in excess of the dollar limit on an export license previously issued to Global.

**The Penalty:** Global agreed to pay a \$38,000 administrative penalty. A portion of the administrative penalty, \$8,000, was suspended for one year.

#### Sun Microsystems, Inc.

**The Violation:** Sun Microsystems of Santa Clara, California failed to comply with the terms and conditions of BIS licenses that were granted to Sun for the export of high performance computers by not filing copies of certain documents with BIS after the exports occurred. Additionally, Sun exported computers to military end-users in the PRC and Egypt without the required BIS licenses and altered a document responsive to a subpoena, among other violations.

**The Penalty:** Sun Microsystems agreed to pay a \$269,000 administrative penalty and to a one year denial of its export privileges. The denial of export privileges was suspended.

**Note:** BIS also settled cases with two of Sun's subsidiaries for aiding and abetting the unlicensed export to the military end-user in China.





## Chapter 3 - Deemed Exports

### Introduction

Most people think of an export as the shipment of a commodity from inside the United States to a foreign country, but this is only one type of export. Under the EAR, the release of technology or source code to a foreign national, even if the foreign national is in the United States, is also "deemed" to be an export to the home country or countries of the foreign national and may require a license under the EAR. Technology can be released through visual inspection, oral exchanges of information, or the application to situations abroad of personal knowledge or technical experience acquired in the United States. For example, the review of controlled technology by a graduate student, who is an alien with a valid visa, pursuant to a grant from a private company which will not release the study publicly, may require an export license or license exception since such review could be considered to be a "deemed export".

### Criminal / Administrative Case Examples

#### Suntek Microwave, Inc. and Charlie Kuan

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**The Violations:** Between 1996 and 2000, Suntek Microwave, Inc. and its President Charlie Kuan failed to obtain export licenses from BIS required for transferring controlled technology to Chinese nationals who worked at Suntek and were trained in detector log video amplifiers (DLVA) manufacturing technology. At the direction of Mr. Kuan, Suntek trained Chinese nationals to manufacture controlled DLVAs for the express purpose of transferring the manufacturing technology to Chengdu Jeway Microwave Telecommunications Co., Ltd., Suntek's primary shareholder and a company known to have been controlled by the PRC government.

Further, Suntek, under the direction of Kuan, failed to obtain the required export licenses for shipments of DLVA to the PRC and knowingly made false statements to BIS on a license application by supplying false end-user information in order to obtain export authorization to ship DLVAs to the PRC. Further, Kuan falsely certified the truth of these statements.

**The Penalty:** Suntek was sentenced to a \$339,000 criminal fine and, in the related administrative case, agreed to pay a \$275,000 administrative penalty and to a twenty year denial of export privileges. Suntek's administrative penalty was waived. Kuan also agreed to pay a \$187,000 administrative penalty and to a twenty year denial of export privileges.

### Fujitsu Network Communications, Inc.

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**The Violation:** Between 1996 and 2000, Fujitsu Network Communications, Inc. engaged in conduct prohibited by the EAR by employing foreign nationals from the PRC and Ukraine to conduct research on the development and manufacturing of commercial digital fiber-optic transmission and broadband switching equipment, software and technology without the required BIS licenses.

**The Penalty:** Fujitsu agreed to pay a \$125,000 administrative penalty.

**Mitigating Circumstance:** Fujitsu voluntarily self-disclosed the violations and cooperated fully with the investigation.

### Pratt & Whitney

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**The Violations:** Between August 1998 and September 1999, Pratt & Whitney failed to obtain the required BIS export licenses for the release of controlled technology relating to material coating and gas turbine engine components to foreign nationals from various countries, including Germany, the Netherlands, and Spain. Pratt also failed to obtain the required licenses for exports it made to China, Japan, and Singapore.

**The Penalty:** Pratt & Whitney agreed to pay a \$150,000 administrative penalty.

**Mitigating Circumstance:** Pratt & Whitney voluntarily self-disclosed the violations and cooperated fully with the investigation.

### New Focus, Inc.

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**The Violations:** From 2000 to 2002, New Focus failed to obtain the export licenses required for transferring technology to two Iranian nationals and one Chinese national who, in the course of their employment in the United States, were exposed to manufacturing technology controlled by the EAR. Also, between 1997 and 2001, New Focus failed to obtain the required export licenses for shipments of amplifiers to the Czech Republic, Singapore, and Chile.

**The Penalty:** New Focus agreed to pay a \$200,000 administrative penalty.

**Mitigating Circumstance:** New Focus voluntarily self-disclosed the violations and fully cooperated with the investigation.

### Lattice Semiconductor Corporation

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**The Violations:** Between July 2000 and January 2002, Lattice Semiconductor Corporation released technical data to Chinese nationals who were brought to the United States from the PRC for technical training in the United States, without obtaining the required BIS licenses. Also, between April 2000 and July 2001, Lattice exported extended temperature range programmable logic devices to the PRC without the required export licenses and exported the related technical data to the PRC without the required export licenses.

**The Penalty:** Lattice agreed to pay a \$560,000 administrative penalty.

**Mitigating Circumstance:** Lattice voluntarily self-disclosed the violations and fully cooperated with the investigation.

## Chapter 4 - State Sponsors of Terrorism

### Introduction

The United States maintains comprehensive export controls against countries that have been declared by the Secretary of State to be state sponsors of terrorism. Many exports to these countries, even of ordinary commercial items such as sunglasses or perfume that are not typically controlled to other countries, may require authorization from the U.S. Government. BIS or the Department of the Treasury's Office of Foreign Assets Control (OFAC), or in some cases both agencies together, work to enforce these controls. Trade with these destinations should be undertaken with extra caution.

### Regional Considerations:

It is important to familiarize yourself with the restrictions that apply to the ultimate destination of your export. U.S. law in this area frequently changes in accordance with an evolving foreign policy. The following websites are good resources:

#### OFAC's website:

<http://www.treas.gov/offices/enforcement/ofac/>

#### BIS's website:

<http://www.bis.doc.gov/>

### Criminal / Administrative Case Examples

#### OTS Refining Equipment Corporation

**The Violation:** Between March 1997 and March 1999, OTS Refining Equipment of Markham, Ontario, Canada, and its president, Abdulmir Mahdi, bought U.S. oil-field and industrial equipment from the United States and had it exported to Iran through Canada. The exports to Iran in which Mahdi and OTS participated were not authorized by OFAC, which administers the embargo against Iran. As a result, these exports also violated the EAR.



### What is OFAC and what does it do?

The Office of Foreign Assets Control administers and enforces economic sanctions programs against countries and groups of individuals, such as terrorists and narcotics traffickers. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.



**The Penalty:** In the criminal case, Mahdi pled guilty to conspiring to violate U.S. export control laws and was sentenced to fifty-one months in prison. In the related administrative cases, Madhi and OTS received twenty-year denials of export privileges.

### 3-G Mermet Corporation

**The Violation:** On January 13, 2003, 3-G Mermet Corporation attempted to ship interior window shade fabric through its parent company, Mermet S.A. of France, to Iran without prior authorization from OFAC as required by the EAR. 3-G Mermet sold the interior window shade fabric with knowledge that its ultimate destination was Iran and that the required U.S. government authorization would not be obtained.

**The Penalty:** 3-G Mermet agreed to pay a \$17,500 administrative penalty and implement an export management system.

### Dosmatic U.S.A., Inc.

**The Violations:** Between May and August of 2001, Dosmatic U.S.A, Inc. and its former Chief Financial Officer, Reza Pirasteh, violated U.S. export controls laws by illegally shipping liquid injectors to Iran via Belgium.

**The Penalty:** In the criminal case, Dosmatic pled guilty to violating U.S. export control laws and was ordered to pay a fine of \$50,000 and placed on probation for three years. Pirasteh also pled guilty and was sentenced to a fine of \$2,000 and probation for three years for making a false statement to federal investigators about Dosmatic's export activities. In the related administrative cases, Dosmatic agreed to pay a \$44,000 administrative penalty and to a thirty month denial of its export privileges. The denial of export privileges was suspended. Pirasteh agreed to a \$4,500 administrative penalty and to a seven-year denial of his export privileges.

#### State Sponsors of Terrorism:

- Cuba
- Iran
- Libya
- North Korea
- Sudan
- Syria

### Bio Check, Inc.

**The Violation:** Between 1998 and 2000, Bio Check exported medical diagnostic kits to Iran through freight forwarders in the United Arab Emirates and Italy, without approval from OFAC, and without filing the required Shipper's Export Declarations.

**The Penalty:** Bio Check agreed to pay an administrative penalty of \$22,500. OFAC imposed a \$32,000 fine for related OFAC violations.

**Mitigating Circumstance:** Bio Check voluntarily disclosed these violations to both BIS and OFAC and cooperated fully in the investigation.



*South Pars Project: A Natural Gas Field Project in Iran.*

## E.H. Wachs

**The Violation:** Between March 1996 and February 1997, E.H. Wachs conspired to export pipe cutting machines and spare parts to the National Iranian Gas Company without the required authorization. Wachs split orders for more than fifty pipe-cutting machines and spare parts into small shipments and then exported the items through Canada to conceal the fact that they were destined for Iran.

**The Penalty:** In the criminal case, Wachs was sentenced to a criminal fine of \$506,000 and 24 months of probation. In the administrative case, Wachs agreed to pay an administrative penalty of \$159,000 and was ordered to institute an export compliance program. Wachs also paid another administrative penalty of \$85,000 to OFAC for the violations of Treasury regulations that stemmed from the unauthorized exports.

## Oerlikon

**The Violation:** Between June 1999 and March 2000, Oerlikon Schweissttechnik AG and Reweld AG conspired to purchase 30,000 pounds of Solka-Flok 200 cellulose, valued at \$21,000, for resale and transshipment to Iran. Oerlikon solicited Reweld to export the cellulose to Switzerland, where Oerlikon intended to take possession of the materials and reexport them to Iran.

**The Penalty:** Oerlikon agreed to pay a \$33,000 administrative penalty. Reweld agreed to pay a \$22,000 administrative penalty. In addition, Oerlikon agreed to a one year denial of export privileges. The denial of export privileges was suspended.

## Industrial Scientific Corporation

**The Violation:** Industrial Scientific Corporation (ISC) violated the EAR by shipping two gas monitors from the United States to the United Arab Emirates in June 1998 without obtaining the proper authorization from the U.S. Government. In addition, ISC further violated the EAR by transferring the gas monitors to the UAE with knowledge that the monitors would be re-exported from the UAE to Iran.

**The Penalty:** ISC agreed to pay a \$30,000 administrative penalty.



## Chapter 5 - Transshipment and Re-exports

### Introduction

Parties to an export transaction cannot bypass the EAR by shipping items through a third country. The transshipment, re-export, or diversion of goods and technologies in international commerce may be a violation of U.S. law. For example, an exporter cannot bypass the U.S. embargo against Iran by shipping an item to a distributor in the United Kingdom and asking that distributor to transship the item to a customer in Iran. Under U.S. law, this would be considered an export to Iran, even though it does not go directly to that country, and both the U.S. exporter and the United Kingdom distributor could face liability.

### Criminal / Administrative Case Examples

#### Ebara International Corporation

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**The Violation:** Ebara International Corporation (EIC) and Everett Hylton, EIC's founder and former Chief Executive Officer, violated the EAR by conspiring with others to export cryogenic in-tank submersible pumps to Iran without the required export licenses and evading the requirements of the EAR by participating in actions to conceal the illegal exports. Specifically, EIC, Hylton and their co-conspirators devised and employed a scheme under which EIC sold the pumps to a co-conspirator in France, who then forwarded the pumps to Iran. In order to conceal the illegal exports, EIC and Hylton participated in the falsification of documents showing the pumps were destined for Iran, the creation of documents stating the ultimate destination was France, and the failure to mark parts for the pump with EIC identification stamps.

**The Penalty:** In the criminal case, Ebara pled guilty to conspiring to violate U.S. export control laws and was sentenced to a \$6.3 million criminal fine and three years probation. In the related administrative case, Ebara agreed to pay a \$121,000 administrative penalty and to a three year denial of export privileges. The denial of export privileges was suspended. As to Hylton, in the criminal case, he was sentenced to a \$10,000 criminal fine and three years probation. In the related administrative case, Hylton agreed to pay a \$99,000 administrative penalty.

#### Lam Research Singapore Pte. Ltd.

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**The Violation:** During November and December of 2000, Lam Research Singapore Pte. Ltd. (LRS) knowingly re-exported U.S.-origin pressure transducers from Singapore to Malaysia without the required BIS licenses.

**The Penalty:** LRS agreed to pay a \$40,000 administrative penalty.

**Mitigating Circumstance:** LRS voluntarily self-disclosed the violations and cooperated fully in the investigation.

## Helka GmbH

**The Violation:** In August 1997, Helka purchased a PhotoScan TD photo digitizing system from a U.S. manufacturer, listing an end user located in the United Arab Emirates. Helka later shipped the PhotoScan TD digitizing system and accompanying software to Iran without the required export licenses. Helka also forwarded the PhotoScan TD system to Iran with knowledge that a violation of the EAR was about to occur and solicited the servicing of the goods in Iran in violation of the EAR.

**The Penalty:** Helka agreed to pay a \$15,000 administrative penalty.

### INCREASING TRANSPARENCY THROUGH PENALTY GUIDANCE

BIS has issued guidance (found in Supplement No. 1 to Part 766 of the EAR) to provide the public with a comprehensive description of how BIS determines appropriate penalties in the settlement of administrative enforcement cases. It explains that BIS carefully considers each settlement offer in light of the facts and circumstances of the case, relevant precedent, and BIS's objective to achieve an appropriate level of penalty and deterrent effect.

The penalty guidance is available online at: <http://www.access.gpo.gov/bis/ear/pdf/766.pdf>

Several factors are taken into account when determining the appropriate administrative penalty. The penalty guidance encourages parties to provide information to BIS that would be helpful in the application of the guidance to their cases and discourages parties from proceeding in a manner that BIS would consider harmful to the resolution of their cases or that may cause interference.

Some factors are given "great weight" and are treated as considerably more significant than factors that are not so designated.

- General factors for consideration include:
  - Destination of the export
  - Degree of willfulness involved in violations
  - Number of violations
  - Criminal charges
- Mitigating factors include:
  - Voluntary self-disclosure of violations ("great weight")
  - Effective export compliance program ("great weight")
  - Cooperation with BIS investigation
  - Assistance to other BIS investigations
  - No previous record of violations
- Aggravating factors include:
  - Deliberate effort to hide or conceal violations ("great weight")
  - Serious disregard for export compliance responsibilities ("great weight")
  - Item is significant due to its sensitivity or reason for control ("great weight")
  - History of violations
  - High quantity or value of exports

## Chapter 6 - Freight Forwarder

### Introduction

**P**rimarily responsibility for compliance with the EAR generally falls on the "principal parties in interest" in a transaction, who are usually the U.S. seller and the foreign buyer. However, freight forwarders or other agents acting on behalf of the principal parties are responsible for their actions, including the representations they make by signing an export declaration or other export control document.

To help avoid liability in an export transaction, agents and exporters must decide whether any aspect of the transaction raises red flags, inquire about those red flags, and ensure that suspicious circumstances are not ignored. Both the agent and the principal party are responsible for the correctness of each entry made on an export document. Good faith reliance on information provided by the exporter may excuse an agent's actions in some cases, but the careless use of pre-printed "No License Required" forms or unsupported entries can get an agent into trouble.

### Criminal / Administrative Case Examples

#### DSV Samson Transport

**The Violation:** DSV Samson Transport, a freight-forwarding company based in New Jersey, pled guilty to forwarding shipments to India between 1999 and 2001 despite being warned by Special Agents from the BIS Office of Export Enforcement on at least three occasions that such shipments would be in violation of BIS export controls designed to prevent nuclear proliferation.

**The Penalty:** In the criminal case, DSV Samson Transport was sentenced to a \$250,000 criminal fine and five years of probation. In the related administrative case, DSV Samson agreed to pay an administrative penalty of \$399,000.



#### OSPECA Logistics Inc.

**The Violation:** Between December 2001 and February 2002, freight forwarder OSPECA Logistics of Brownsville, Texas, exported shipments of hydrogen fluoride to Mexico on behalf of a customer, without the required export licenses from BIS. In addition to the unlicensed export violations, OSPECA filed false Shipper's Export Declarations in conjunction with the shipments.

**The Penalty:** OSPECA agreed to pay a \$60,000 administrative penalty, of which \$15,000 was suspended.

## Immediate Customs Service, Inc.

**The Violation:** Between September 1995 and December 1996, Immediate Customs Service, an international freight forwarder and customs broker, participated in the export of U.S. origin perfume to Cosmotrans in Switzerland, a company that was denied all U.S. export privileges for twenty years in 1988

**The Penalty:** Immediate Customs Service agreed to pay a \$30,000 administrative penalty of which \$20,000 was suspended.

## Federal Express

**The Violation:** In 1999, Federal Express committed one violation of a denial order and one violation of the recordkeeping provisions of the EAR when it transported U.S.-origin equipment to the Realtek Semiconductor Co. Ltd., of Taipei, Taiwan, in violation of Realtek's denial order.

**The Penalty:** Federal Express Corporation agreed to pay a \$15,000 administrative penalty.





## Chapter 7 - "Catch-All" Controls

### Introduction

As mentioned in Chapter One, BIS controls exports of items not only based on their technical specifications, but also based on their intended end-use and end-user. The EAR impose license requirements on exports of items subject to the EAR if the exporter knows or has reason to know that any of the items will be used in an end-use of particular concern to the U.S. Government, such as a missile or nuclear weapons program. These controls are often referred to as "catch-all" controls because they apply to any item subject to the EAR, even if the item would not ordinarily require a license based on its technical specifications.

The U.S. Government has officially notified the public, through the Entity List published in Supplement Four to Part 744 of the EAR, that exports to certain end-users present an unacceptable risk of being diverted to an end-use of concern and require a license. While this List assists businesses in determining whether an entity poses proliferation concerns, it is not comprehensive. It does not relieve parties to an export transaction of their responsibility to determine the nature and activities of potential customers who may not be on the Entity List (see BIS's "Know Your Customer" Guidance in Supplement No. Three to Part 732 of the EAR, available on the BIS website).

The Entity List is published in the *Federal Register*. The *Federal Register* is the official source of information about organizations on BIS's Entity List. The Federal Register from 1995 to the present is available on the Government Printing Office Access Web site. The current Entity List can also be found on the BIS website at <http://www.bis.doc.gov/>.

### Criminal / Administrative Case Examples

#### IBM East Europe/Asia Ltd.

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**The Violation:** Between 1996 and 1997, IBM East Europe/Asia Ltd., a Russian subsidiary of International Business Machines Corporation, exported computers to a Russian nuclear weapons laboratory, Arzamas-16, having reason to know that the computers would be used "directly or indirectly" in research on, or development, design, manufacture, construction, testing or maintenance of nuclear explosive devices and without the required BIS license.

**The Penalty:** In the criminal case, IBM pled guilty to an export violation and was sentenced to a \$8.5 million criminal fine. In the related administrative case, IBM agreed to pay a \$171,000 administrative penalty and to a two year denial of export privileges. The denial of export privileges was suspended.



## Optical Associates, Inc.

**The Violation:** On or about December 2, 1998, Optical Associates exported a U.S.-origin Mask Aligner and parts from the U.S. to Bhaba Atomic Research Center (BARC), in India, an entity on the BIS Entity List, without obtaining the required BIS license.

**The Penalty:** In the criminal case, Optical Associates was sentenced to a criminal fine of \$100,000 and two years probation. In the related administrative case, Optical Associates agreed to a three year denial of export privileges to India.

## Berkeley Nucleonics Corporation

**The Violation:** Between 1998 and 2000, Berkeley Nucleonics Corporation (BNC) exported and attempted to export shipments of nuclear pulse generators to the Department of Atomic Energy (DAE) and the Nuclear Power Corporation (NPC), in India, without the required licenses. At the time of the export, DAE and NPC were both on BIS's Entity List and exports to DAE and NPC required prior authorization.



*Pulse Generator*

**The Penalty:** In the criminal case, BNC was sentenced to a \$300,000 criminal fine. In the related administrative case, BNC agreed to pay a \$55,000 administrative penalty and to a five-year denial of export privileges. The denial of export privileges penalty was suspended. Further, two former employees of BNC pled guilty to misrepresenting and concealing facts on an export document and making a false statement on an export control document. Both were sentenced to criminal fines of \$1,000, two years probation and 100 hours of community service, and were prohibited from engaging in or facilitating export transactions.

## RLC Electronics, Inc.

**The Violation:** Between March 2002 and April 2003, RLC Electronics, Inc. exported power dividers and low pass filters without the required BIS licenses to the Indian Space Research Organization's (ISRO) Telemetry, Tracking and Command Network (ISTRAC) in India. In January 2003, RLC exported position switches without the required BIS license to the ISRO Sriharikota Space Center (SHAR) in Bangalore, India. At the time of the export, ISTRAC and SHAR were on BIS's Entity List and exports to ISTRAC and SHAR required prior authorization. RLC also made false statements on a Shipper's Export Declaration submitted to the U.S. Government.

**The Penalty:** RLC Electronics agreed to pay a \$30,000 administrative penalty.

## General Monitors

**The Violation:** In December 1998, General Monitors exported gas and fire detection equipment without the required BIS licenses to Bharat Heavy Electricals Limited (BHEL) in India. Further, between 1998 and 2001, General Monitors falsely indicated that shipments to BHEL did not require an export license on Shipper's Export Declarations accompanying shipments to BHEL. At the time of the export, BHEL was on BIS's Entity List and exports to BHEL required prior authorization.

**The Penalty:** General Monitors agreed to pay a \$40,000 administrative penalty.

**Mitigating Circumstance:** General Monitors voluntarily self-disclosed some of the violations and cooperated fully in the investigation.

### PARTNERSHIP BETWEEN EXPORT ENFORCEMENT AND YOU

By employing best compliance practices and working together with Export Enforcement, your company can avoid illegal transactions, thereby helping you to:

- avoid negative publicity
- avoid fines and imprisonment
- avoid costs for legal representation resulting from a criminal or administrative proceeding.

**STRENGTHENING OUR PARTNERSHIP MEANS WORKING TOGETHER TO  
ENHANCE OUR NATIONAL SECURITY**



## Chapter 8 - Denial of Export Privileges

### Introduction

**B**IS has the authority and discretion to deny all export privileges under the EAR of a particular domestic or foreign person or company. BIS may impose a denial of export privileges as a sanction in an administrative case, or as a result of a person's criminal conviction of certain statutes (e.g. the Arms Export Control Act), and may also impose temporary denials to prevent an imminent violation of the EAR. The standard terms of a BIS denial order are published in Supplement Two to Part 764 of the EAR.

BIS publishes the names of persons who have had their export privileges denied in the *Federal Register*. The *Federal Register* is the official source of information about denied persons. The *Federal Register* from 1995 to present is available on the Government Printing Office Access Web site. A current list of persons denied export privileges can also be found on the BIS website at <http://www.bis.doc.gov/>.

### Criminal / Administrative Case Examples

#### InfoCom Corporation

**The Violation:** During late 2001 and early 2002, Ihsan Elashyi, a corporate officer of InfoCom Corporation, violated a Temporary Denial Order (a 180-day denial of export privileges issued to prevent an imminent violation of the EAR) on numerous occasions and was criminally convicted. On July 7, 2004, InfoCom and five corporate officers, including Ihsan Elashyi and his brothers Bayan, Ghassan, Basman, and Hazim, were also convicted of conspiring to export certain proscribed computer equipment to Libya and Syria (two state sponsors of terrorism) and conspiring to file false Shipper's Export Declarations.

**The Penalty:** Ihsan Elashyi was sentenced to four years in federal prison for violating the denial order. Sentencing on the export violations, the conspiracy charges, and false statement charges is pending the outcome of an additional trial related to money laundering and financing of terrorism.



*The Arrest of Ihsan Elashyi*

### Expeditors International of Washington, Inc.

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**The Violation:** In December of 1996, Expeditors International of Washington, Inc. violated the terms of a BIS order denying the export privileges of Realtek Semiconductor Co., Ltd., in Taiwan, when it forwarded commercial air-conditioning units to Realtek. The Department settled related charges against Realtek in December of 2002. Realtek is no longer subject to a denial order.

**The Penalty:** Expeditors agreed to pay an administrative penalty of \$5,000.

### Yaudat Mustafa Talyi

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**The Violation:** In November and December 2002, Yaudat Mustafa Talyi violated a BIS Temporary Denial Order (a 180-day denial of export privileges issued to prevent an imminent violation of the EAR) placed against him on September 30, 2002, by participating in an attempted export of items to the United Arab Emirates, and directing another exporter to handle one of his pending exports.

**The Penalty:** In the criminal case, in April 2004, Talyi was sentenced to a \$25,000 criminal fine, and five months in prison, five months home confinement and twelve months supervised release. In the related administrative case, Talyi was ordered to pay a \$121,000 administrative penalty and a twenty year denial of export privileges was imposed.

### "A Cautionary Tale"

#### Andrew Pietkiewicz

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**The Violation:** Andrew Pietkiewicz failed to pay a portion of a \$25,000 administrative penalty imposed on him by BIS (previously BXA) for the illegal export of computers and computer accessories.

**The Penalty:** Special Agents from BIS's Office of Export Enforcement obtained an arrest warrant for Pietkiewicz and, on March 5, 2000, they arrested him as he entered the U.S. from Poland. Pietkiewicz was remanded to custody, and later pled guilty to a felony charge.

## Chapter 9 - False Statement/Misrepresentation of Fact

### Introduction

A party to an export transaction may be subject to criminal and/or administrative sanctions for making false statements to the U.S. Government in connection with an activity subject to the EAR. Most frequently, the false statements are made on an export document or to a federal law enforcement officer. Common types of false statements seen by the BIS are statements on a Shipper's Export Declaration that an export does not require a license (i.e., that it is "NLR") when in fact a license is required for the shipment, or statements that an export was shipped under a particular license number when in fact that license was for a different item. False statements that are made to the U.S. Government indirectly through another person, such as a freight forwarder, are still violations of the EAR.

### Criminal / Administrative Case Examples

#### Azure Systems

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**The Violation:** On July 16, 2004, Ting-Ih Hsu and Hai Lin Nee of Azure Systems, Inc., of Florida, pled guilty to submitting a document to the U.S. Government which gave false information regarding the export of 25 low noise amplifier chips to a company in the PRC.

**The Penalty:** On October 6, 2004, defendants were sentenced to three years probation.

#### Emcore Corporation

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**The Violation:** Between 2000 and 2003, Emcore Corporation made false statements to the U.S. Government and violated conditions on export licenses that it had received for exports of Metal Organic Vapor Deposition (MOCVD) tools to the PRC. Further, between 1998 and 2003, Emcore knowingly exported MOCVD tools to Taiwan without the required export licenses, illegally serviced the tools, failed to file Shipper's Export Declarations, and failed to retain certain export control documents.

**The Penalty:** Emcore agreed to pay a \$400,000 administrative penalty.

**Mitigating Circumstances:** Emcore voluntarily self-disclosed the violations and cooperated fully in the investigation.

### **Kennametal Inc.**

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**The Violation:** Between August 1998 and April 2003, Kennametal, in connection with making unlicensed exports of nickel powder to Chile, Peru, Taiwan, and Israel made false or misleading representations on export documentation that was filed with the U.S. Government. Kennametal also failed to comply with reporting and record-keeping requirements.

**The Penalty:** Kennametal agreed to pay a \$262,500 administrative penalty.

### **Zooma Enterprises, Inc.**

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**The Violation:** On or about December 24, 1998, Zooma Enterprises and its President, Issa Salomi, made false statements to the U.S. Government by listing the country of ultimate destination on a Shipper's Export Declaration as Jordan, when the destination was Iraq. Further, Salomi filed a petition with the U.S. Customs Service after its medical equipment was seized that falsely represented facts about the sale of the medical equipment including its ultimate destination.

**The Penalty:** Salomi agreed to pay a \$24,000 administrative penalty and Zooma agreed to pay an \$8,000 administrative penalty.

### **Maria Elena Ibanez**

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**The Violation:** Between May 1996 and September 1998, Maria Elena Ibanez caused, aided, and abetted International High Tech Marketing (IHTM) in various export control violations, including improperly avoiding the requirement to file Shipper's Export Declarations by understating values on commercial invoices, submitting falsified Shipper's Export Declarations to the U.S. Government, and supplying its freight forwarder with undervalued commercial invoices that were used by the freight forwarder to prepare inaccurate SED's and air waybills.

**The Penalty:** In March 2000, IHTM pled guilty to five counts of export violations in connection with exports to Libya and Sudan and the false information it provided on commercial invoices. IHTM was fined \$250,000 for these violations. In her criminal case, Ibanez was sentenced to 18 months probation and a \$5,000 fine for conspiring to falsify commercial invoices. In the related administrative case, Ibanez agreed to pay a \$115,000 administrative penalty and to a five year denial of export privileges. The denial of export privileges was suspended.

### **E & M Computing Ltd.**

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**The Violation:** E & M of Ramat-Gan, Israel, "loaned" a computer to a customer in Israel until a BIS license could be obtained, and then provided false and misleading information in support of the license application that was filed with BIS by the U.S. exporter. E & M then attempted to avoid detection of this unauthorized transfer by removing the computer from the end-user when it was notified that BIS officials were planning to conduct a post-shipment verification. In other instances, E & M upgraded computers above the export control threshold with CPUs from its own warehouse without the necessary BIS license, and sold or loaned a server to a customer without authorization, after learning that a BIS license was required. Finally, E & M failed to disclose these upgrades to BIS when filing notifications required by the National Defense Authorization Act of

1998. Further, E & M caused the export of central processing units (CPUs), a workstation, a server, and a high performance computer to Israel without the required export licenses. E & M evaded the EAR by purchasing computers from another vendor after learning that BIS would deny the first vendor's license application to export the items.

**The Penalty:** E & M Computing agreed to pay a \$165,000 administrative penalty and a three year denial of export privileges. The denial of export privileges was suspended.





## Chapter 10 - Antiboycott Violations

### Introduction

**T**he antiboycott provisions of the EAR prohibit U.S. persons from complying with certain requirements of unsanctioned foreign boycotts, including requirements that the exporter provide information about business relationships with a boycotted country or refuse to do business with persons on certain boycott lists. In addition, the EAR requires that U.S. persons report their receipt of certain boycott requests to the BIS. Failure to report receipt of covered boycott requests to BIS can be a violation of the EAR. Under the antiboycott provisions of the EAR, certain foreign subsidiaries of domestic U.S. companies are considered to be U.S. persons.

### An Overview of the Antiboycott Laws

#### History

During the mid-1970's, the United States adopted two laws to counteract the participation of U.S. citizens in other nations' economic boycotts of countries friendly to the United States. These "antiboycott" laws were the 1977 amendments to the Export Administration Act (EAA) (as carried over into the Export Administration Act of 1979) and the Ribicoff Amendment to the 1976 Tax Reform Act (TRA).

#### Objectives

The antiboycott laws were adopted to encourage, and in specified cases, require U.S. persons to refuse to participate in foreign boycotts that the United States does not sanction. They have the effect of preventing U.S. persons from being used to implement foreign policies of other nations which run counter to U.S. policy.

#### Primary Impact

The Arab League boycott of Israel is the principal foreign economic boycott that U.S. persons must be concerned with today. The antiboycott laws, however, apply to all boycotts of countries that are friendly to the United States imposed by foreign countries.

#### Who Is Covered by the Laws?

The antiboycott provisions of the EAR apply to all "U.S. persons," defined to include individuals and companies located in the United States and their foreign affiliates. These persons are subject to the law when their activities relate to the sale, purchase, or transfer of goods or services (including information) within the U.S. or between the U.S. and a foreign country. This covers U.S. exports, forwarding and shipping, financing, and certain other transactions by U.S. persons not in the U.S.

For questions about boycott-related matters please contact the BIS Office of Antiboycott advice line at (202) 482-2381 or send an e-mail as indicated in the antiboycott compliance section of the BIS website.

## Criminal / Administrative Case Examples

### Johns Hopkins Health System Corporation

**The Violation:** Johns Hopkins Health System violated the antiboycott provisions of the EAR when it discriminated against a U.S. person in support of the Arab League boycott of Israel. The person had been seeking a position in the company's International Services Department, which markets medical services around the world, including the Middle East. The discriminatory conduct, BIS believes, was motivated by the company's concern about having a Jewish person in that position because of the Arab League boycott of Israel.

**The Penalty:** Johns Hopkins agreed to pay a \$10,000 administrative penalty.

**Mitigating Circumstance:** Johns Hopkins Health System voluntarily self-disclosed the violation and cooperated fully with the investigation.

### Alison Transport

**The Violation:** On three occasions, in connection with transactions involving the sale and transfer of goods from the United States to Oman, Kuwait, and Saudi Arabia, Alison Transport furnished prohibited information about another company's business relationships in violation of the EAR. Alison also failed to report its receipt of a request from Oman to provide a certificate that the aircraft used in the transactions were not blacklisted by the Arab League Boycott Committee.



**The Penalty:** Alison agreed to pay a \$22,500 administrative penalty.

### St. Jude Medical Export GmbH

**The Violation:** St. Jude violated the EAR when it failed to report in a timely manner its receipt of three requests from an Iraqi government agency to adhere to the rules of the Arab League boycott of Israeli during the 2000-2001 reporting period. On four occasions, St. Jude also violated the antiboycott provisions of the EAR by agreeing to refuse to do business with blacklisted persons.

**The Penalty:** St. Jude agreed to pay a \$30,000 administrative penalty.

**Mitigating Circumstance:** St. Jude voluntarily self-disclosed the violations and cooperated fully with the investigation.

### Input/Output Exploration Products, Inc.

**The Violation:** In 1999 Input/Output Exploration Products (UK), Inc., violated the antiboycott provisions of the EAR when it provided answers to questions from a customer about its business with or in Israel and the business relationships of its parent company with or in Israel. Input/Output also unlawfully agreed to refuse to do business with companies on lists maintained by Arab League countries that boycott Israel, and failed to report its receipt of boycott requests.

**The Penalty:** Input/Output agreed to pay a \$24,500 administrative penalty.

## Jagro Customs Brokers and International Freight Forwarders, Inc.

**The Violation:** In January 1998, in connection with a shipment of goods to Bahrain, Jagro furnished information about another company's business relationships with Israel when it furnished a commercial invoice that contained the statement: "We confirmed that the goods are not of Israeli origin nor do they contain any Israeli material." Jagro also failed to report its receipt of the request for such an attestation in violation of the antiboycott provisions of the EAR.

**The Penalty:** Jagro agreed to pay a \$5,700 administrative penalty.

## Rockwell Automation, Inc.

**The Violation:** Rockwell Automation, Inc., a Milwaukee-based company and successor to Reliance Electric Company, assumed responsibility for violations of the antiboycott provisions of the EAR committed by Dodge International, a U.S. based division of Reliance Electric, as well as antiboycott violations committed by two foreign subsidiaries of Reliance Electric.

Dodge violated the antiboycott regulations by failing to report a request from a Kuwaiti purchaser for a declaration from Dodge that the goods at issue did not originate in Israel and that Dodge was not affiliated with any Israeli boycotted or blacklisted company. Dodge also failed to maintain records containing information relating to a reportable boycott request as required by the EAR's antiboycott provisions.

In addition, the two foreign subsidiaries of Reliance, prior to their acquisition by Rockwell, each violated the EAR's antiboycott provisions by furnishing prohibited information about their or another company's business relationships. Specifically, Reliance Electric GmbH furnished information regarding its business relationship with Israel in a transaction involving a sale to the United Arab Emirates, and Reliance Electric AG furnished information regarding the blacklist status of the aircraft carrying the goods in a transaction involving a sale to Pakistan.

**The Penalty:** Rockwell and the two Reliance subsidiaries agreed to pay a \$9,000 administrative penalty.

## Serfilco, Ltd.



**The Violation:** Serfilco violated the terms of a denial order imposed by BIS in 1996 by negotiating the sale of goods to companies in the United Arab Emirates and Saudi Arabia in 1996 and 1997.

The 1996 denial order was imposed after Serfilco violated the antiboycott provisions of the EAR by giving information about its business relationship with Israel when it responded to a boycott questionnaire from an Iraqi distributor and for failing to report to BIS its receipt of boycott-related requests.

**The Penalty:** Serfilco agreed to pay a \$65,000 administrative penalty. In addition, Serfilco agreed to a three year denial of export privileges to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and the Republic of Yemen.

## McMaster-Carr Supply Company

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**The Violation:** McMaster-Carr failed to report its receipt of boycott-related requests within the time period required by the antiboycott provisions of the EAR. The transactions involved sales of goods from the United States to Oman, the United Arab Emirates, Kuwait, Qatar, and Saudi Arabia.

**The Penalty:** McMaster-Carr agreed to pay a \$8,000 administrative penalty.

# Chapter 11 - Successor Liability

## Introduction

**R**ecent administrative cases have made clear that businesses can be held liable for violations of the EAR committed by companies that they acquire. Businesses should be aware that the principles of successor liability may apply to them and perform "due diligence" in scrutinizing the export control practices of any companies that they plan to acquire.

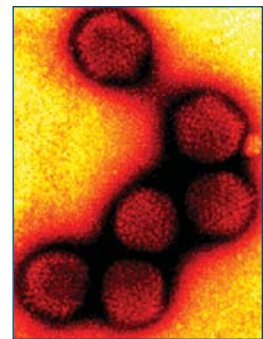
A properly structured due diligence review can determine whether an acquired company has violated any export laws. This review should examine the company's export history and compliance practices, including commodity classifications, technology exchanges, export licenses and authorizations, end-users, end-uses, international contracts, the status of certain foreign employees who have access to controlled technologies, and the target company's export policies, procedures and compliance manuals. Failure to properly scrutinize a company's export practices can lead to liability being imposed on the acquiring company.

## Criminal / Administrative Case Examples

### Sigma-Aldrich Corporation

**The Violation:** A company that Sigma-Aldrich had acquired in 1997 made unauthorized exports of controlled biological toxins to Europe and Asia on numerous occasions prior to being acquired. A Sigma Aldrich company continued unlicensed exports for more than a year after the acquisition. In denying Sigma-Aldrich's Motion for Summary Decision, an administrative law judge held that companies can be held liable for export control violations that have been committed by firms that they acquire.

**The Penalty:** Sigma-Aldrich agreed to pay a \$1,760,000 administrative penalty.



*A Bio Toxin*

### Saint-Gobain Performance Plastics, Inc. (SGPPL)

**The Violation:** Between November 1998 and September 2000, SGPPL or Furon Corporation (acquired by SGPPL in 1999) exported controlled Teflon-coated valves and pumps to Israel and Taiwan without the required export licenses from BIS. SGPPL failed to file a Shipper's Export Declaration for some of these shipments and filed Shipper's Export Declarations for others which falsely indicated that the shipments did not require an export license. Most of the violations that SGPPL was liable for were committed by the Furon Corporation prior to its acquisition by SGPPL in 1999. Under the principles of successor liability, SGPPL was liable for violations of export control laws committed by Furon.

**The Penalty:** SGPPL agreed to pay a \$697,500 administrative penalty.

## Symmetricon, Inc.

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**The Violation:** In May 1999, Datum, Inc. (Datum), a company acquired by Symmetricon in 2002, exported an ovenized quartz crystal oscillator to an organization in India on BIS's Entity List without the required BIS license. In addition, Datum forwarded the oscillator with knowledge that a violation of the EAR would occur and made a false statement on a Shipper's Export Declaration.

In May 1999, Datum also exported cesium frequency standard equipment and an ovenized quartz crystal oscillator to Malaysia without the required BIS license in violation of the EAR. Datum also made a false statement on a Shipper's Export Declaration.

**The Penalty:** Symmetricon agreed to pay a \$35,500 administrative penalty.





U.S. DEPARTMENT OF COMMERCE  
Bureau of Industry and Security  
Export Enforcement